IN THE DRAWINGS:

Please amend Figures 1, 4 and 6 of the drawings as shown in red in the attached copies of the drawings.

REMARKS

The title and specification have been amended to clarify the invention and overcome the Examiner's objections.

Claim 15 has been canceled without prejudice. Claims 27-39 have been amended to clarify the invention and overcome the Examiner's rejection. Claim 1 has been amended to correct a clerical error. Claims 49, 50 and 51 have been added to further scope the invention. No new matter has been entered.

Pursuant to 37 CFR 1.121, marked copies of the amended specification paragraphs and claims showing the changes made therein accompany this Amendment.

Turning to the Examiner's objections as to the drawings, the drawings have been amended to show the "generally planar rear surface" in claim 1, "flexible membrane" in claim 6, "battery" in claim 19 and "the back portion is angularly adjustable" in claim 20. The "removable lamp support housing" in claim 18 is shown in Figure 6 at 123, and described on page 8 of the specification, lines 5-10. The "percussive or rolling massage motors" of claim 17 are shown generally in Figure 1 at 50a and 50b, and described on page 5 of the specification, lines 5-8. Corrected formal drawings will be filed upon allowance of the Application.

Turning to the rejection of claims 17, 20, 29 and 40 under 35 USC § 112, first paragraph, the Examiner's rejection is in error. Percussive motors and rolling motors per se for use in massagers are well-known in the art. U.S. Patent 5,487,723 to Ito (copy attached hereto as Exhibit A); PCT Publication No. WO 95/26702 to Noble (copy attached hereto as Exhibit B);

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European Patent No. 755 240 to Noble (copy attached hereto as Exhibit C); European Patent Application No. 229 531 of Noble et al. (copy attached hereto as Exhibit D) all disclose percussive and rolling motors. Thus, because one skilled in the art would know how to construct a rolling or percussive motor, the rejection of claims 17 and 29 is in error. As for reclining the backrest, this has been done for years, for example, in automotive and airplane seating. Moreover, the specification discloses a system where the armrests are detached, the cushion is reclined and the arm rests are reattached using hook and loop type fasteners and locked into place with a knob (page 8; lines 20-24; page 9; lines 1-3), thereby structurally defining one exemplary method of reclining the backrest.

Turning to the rejection of claims 15, 17, 27-46 and 48 under 35 USC § 112, second paragraph, as noted *supra*, percussive and rolling massage motors per se are well known and described in the prior art (see prior art above), and one skilled in the art would understand to make the claimed invention. Claims 27-39 have been amended to include the term "bed rest cushion."

Turning to the art rejections, claims 1-4, 10-12, 14-20, 25, 27-32, 37, 39, 40, 45, 47 and 48 have been rejected as obvious over U.S. Patent 5,713,832 to Jain in view of U.S. Patent 3,879,086 to Moceri. The Examiner's rejection is in error. Jain teaches a cushion with a vibrating massager attached to the cushion (col. 4; lines 41-67; Figures 5 and 6). Jain fails to teach a cushion with a light. Thus, Jain cannot render this aspect of the invention obvious.

Further, Jain in view of Moceri cannot render the instant invention obvious because Moceri relates to non-analogous art. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the invention was

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concerned." See *In re Oetiker*, 977 F.2d 1443, 1446 (Fed. Cir. 1992). Here, Moceri relates to an attachment to an outdoor chair (col. 1; lines 5-12), which is classified as a different art area within the PTO. While such evidence is not conclusive, in order to use a reference in a different art area, there must be some evidence that one with ordinary skill in the art would combine the Moceri reference with that of Jain to produce a vibrating bed rest cushion with a light (MPEP § 2141.01(a)). The only thing Jain and Moceri have in common is that they both are for sitting. The primary reference Jain concerns upholstered, cushioned, indoor furniture having a built-in massaging device powered by connection to electrical mains. Moceri, on the other hand, concerns outdoor folding tubular light-weight furniture. Aside from the fact that Jain and Moceri both are for sitting, they essentially have nothing else in common.

Moreover, Applicants' claimed invention combines a light and a massager integrated within a cushion. Lights and in particular light filaments are intrinsically fragile. Given the intrinsic fragility of light filaments, it is submitted one skilled in the art would not think to combine a light and a vibrator, since vibrations from the vibrator would be expected to dislodge or break the light filaments, thus rendering the light inoperative. Moceri does not have this problem, since Moceri's folding chair is not designed to vibrate. Moreover, Jain is designed for inside use, where lighting typically is well provided. Moceri is designed for outside use, where lighting is a problem due to the provision of a sunshade. Thus, one skilled in the art would not think to combine Jain and Moceri to produce a bed rest cushion with a light and a massager. Therefore, claims 1 and 27, and the several claims 2-4, 10-12, 14-20, 25, 28-32, 37, 39, 40, 45, 47 and 48 directly or indirectly dependent thereon cannot be said to be obvious from Jain and Moceri.

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Turning to the rejection of claims 5, 7, 34 and 36 as obvious from Jain and Moceri and further in view of Kanda, all of these claims are directly or indirectly dependent on claims 1 or 27, as the case may be. The deficiencies of the primary combination of Jain and Moceri vis-à-vis claims 1 and 27 are discussed above. It is not seen that Kanda supplies the missing teachings to Jain and Moceri to achieve or render obvious claim 1 or claim 27. Kanda has been cited as teaching an arm rest having a control panel with switches for controlling a reading light, and is acknowledged as so teaching. However, the more basic and essential combination, i.e., of a cushion or bed rest cushion including a massage motor and a light source are not found in Kanda. Thus, no combination of Jain, Moceri and Kanda reasonably could be said to achieve or render obvious claims 1 and 27, or claims 5, 7, 34 and 36 which depend thereon.

Turning to the rejection of claims 6 and 35 as obvious from Jain in view of Moceri and Kanda and further in view of Stottmann, claims 6 and 35 are dependent, respectively, on claims 5 and 34. The deficiencies of the combination of Jain, Moceri and Kanda vis-à-vis claims 5 and 34 are discussed above. It is not seen that Stottmann supplies the missing teachings to Jain, Moceri and Kanda to achieve or render obvious claims 5 and 34 or claims 6 and 35 which depend thereon.

Stottmann has been cited as teaching a flexible membrane for covering a control panel, and is acknowledged as so teaching. However, Applicants are not claiming a flexible membrane for covering a control panel per se. Missing from Stottmann and the several other references is a teaching of a cushion or bed rest cushion incorporating both a massage motor and a light source, as required by Applicants' independent claims, or any teaching that would lead one skilled in the art to combine the several references applied by the Examiner to achieve such a construction

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which, as noted above, would be contraindicated due to the known fragility of lamp filaments to vibration. Thus, claims 6 and 35 also cannot be said to be obvious from the applied art.

Turning to the rejection of claims 8 and 38 as obvious from Jain in view of Moceri and further in view of Stimpson, claims 8 and 38 also are indirectly dependent on claims 1 and 27, respectively. The deficiencies of the combination of Jain and Moceri vis-à-vis claims 1 and 27 are discussed above. It is not seen that Stimpson supplies the missing teachings to Jain and Moceri to achieve or render obvious claims 1 and 27 or claims 8 and 38 which depend thereon. Stimpson has been cited as teaching a touch-sensitive switch that is known for adjusting the intensity of a light source. However, beyond that common touchstone, Stimpson is quite remote. Stimpson concerns a corner switch designed for mounting to a wall corner or door jamb. Applicants' claimed invention concerns a cushion or bed rest cushion. Thus, Stimpson also is believed to constitute non-analogous art. Moreover, Stimpson, being a wall switch, clearly would not be used with a massaging motor. Thus, no combination of Jain, Moceri and Stimpson reasonably could be said to achieve or render obvious claims 1 and 27, or claims 8 and 38, which depend thereon.

Turning to the rejection of claims 9 and 33 as obvious from Jain in view of Moceri and further in view of Tomlinson, claims 9 and 33 also depend, indirectly, from claims 1 and 27, respectively. The deficiencies of the combination of Jain and Moceri vis-à-vis claims 1 and 27 are discussed above. It is not seen that Tomlinson supplies the missing teachings to Jain and Moceri to achieve or render obvious claims 1 and 27 or claims 9 and 33, respectively, which depend thereon. Tomlinson has been cited as teaching a cup holder located in an arm rest and is acknowledged as so teaching. However, Applicants do not claim to have invented the

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incorporation of a cup holder into an arm rest. Thus, claims 9 and 33 also are patentable over the art.

Turning to the rejection of claim 13 as obvious from Jain in view of Moceri and further in view of Liang, claim 13 is indirectly dependent on claim 1. The deficiencies of the primary combination of Jain and Moceri vis-à-vis claim 1 are discussed above. It is not seen that Liang supplies the missing teachings to Jain and Moceri to achieve or render obvious claim 1. Liang has been cited as teaching a massaging pillow attachable from a chair, and is acknowledged as so teaching. However, Applicants do not claim to have invented per se a massaging pillow attached to a chair. Thus, the rejection of claim 13 as obvious from the art is in error.

Likewise, the rejection of claims 21-23 and 41-43 as obvious from Jain in view of Moceri and further in view of Gera is in error. In this latter rejection, the Examiner acknowledges Jain's cushion lacks a telephone, but cites Gera as a chair having a telephone. Again, Applicants do not claim to have invented per se the vision of a chair with a telephone. Thus, the rejection of claims 21-23 which depend directly or indirectly on claim 1, and the rejection of claims 41-43 which depend directly or indirectly on claim 27 likewise are in error.

Turning to the rejection of claims 22 and 24 as obvious from Jain in view of Moceri and further in view of Foster, Jr. et al., claims 24 and 44 are dependent on claims 1 and 27, respectively. The deficiencies of Jain and Moceri vis-à-vis claims 1 and 27 are discussed above. Foster, Jr. et al. does not cure the deficiencies. In the rejection the Examiner refers to Foster, Jr. et al. as teaching a massaging cushion including a bladder. Even assuming *arguendo* the Examiner's characterization of Foster, Jr. et al. is correct, Foster, Jr., et al. still fails to supply the more basic and essential missing teachings to Jain and Moceri to achieve or render obvious claims 1 and 27 and claims 24 and 44 which depend, respectively, thereon.

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Finally, turning to the rejection of claims 26 and 46 as obvious from Jain in view of Moceri and further in view of Guenther, claims 26 and 46 are dependent, respectively, on claims 1 and 27. The deficiencies of the primary references Jain and Moceri vis-à-vis claims 1 and 27 are discussed above. It is not seen that Guenther supplies the missing teachings to the primary combination to achieve or render obvious claims 1 and 27 or claims 26 and 46 which depend thereon. Guenther is a cellular telephone headset for providing hands-free communication. Applicants' claims 26 and 46 require the transmitter coupled to the arm. Guenther does not teach this. Guenther's transmitter 23 is coupled to the user. Thus, in addition to failing to supply the missing teachings to Jain and Moceri to achieve or render obvious claims 1 and 27, Guenther also fails to supply the specific teachings specified by dependent claims 26 and 46.

Having dealt with all the objections raised by the Examiner, the Application is believed to be in order for allowance.

Credit card payment Form PTO 2038 authorizing payment of $204.00 to cover the added claim fees accompanies this Amendment. In the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our Deposit Account No. 08-1391.

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In the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our Deposit Account Number 08-1391.

Respectfully submitted,

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Attorney for Applicant
Reg. No. 24,315

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on September 30, 2002, at Tucson, Arizona.

By _____

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EXHIBIT LIST

Exhibit A	U.S. Patent 5,487,723 to Ito
Exhibit B	PCT Publication No. WO 95/26702 to Noble
Exhibit C	European Patent No. 755 240 to Noble
Exhibit D	European Patent Application No. 229 531 of Noble et al.

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MARKED COPY OF AMENDED SPECIFICATION PARAGRAPHS

SERIAL NO. 09/801,353

DOCKET NO. BROOKSTONE 00.04

MARKED SPECIFICATION PARAGRAPHS SHOWING CHANGES MADE

Title beginning at page 1, line 1:

MASSAGING BED REST CUSHION WITH LIGHT

Paragraph beginning at page 3, line 7:

Independent touch sensitive button controls for setting the speed of the motor, the levels of the vibration of the massaging elements and for power, and for turning the light off and on and a rheostat control may be maintained beneath a thin flexible membrane[,] mounted on upper or side surfaces of an armrest [or]. Alternatively independent touch sensitive controls may be a touch switch control panel, mounted on the upper or side surface of an armrest. The thin membrane that covers the individual buttons prevents introduction of powders, fluids, oils or the like, into the switches while allowing independent setting of the controls. Other control button configurations are contemplated including individual molded buttons. Alternatively, the control panel may be connected to the cushion through a cord. In such case, the cushion may include a pocket for stowing the control panel, or the control panel may be releasably mounted to the cushion by hook-and-loop fasteners of the like.

Paragraph beginning at page 5, line 12:

Padded armrests 17 and 18 may extend outwardly from opposite corners at the bottom of the back portion 12 substantially perpendicular to the rear surface. Armrest 18 may include a control panel 25. As shown in FIG. 3, the control panel 25 may be covered with a thin flexible membrane 79 covering a plurality of touch sensitive control buttons/actuators or switches, including power on/off button 35, power on indicator light 36, speed setting control button or buttons (FIG. 4) 37, LED speed indicators 38, light on/off switch 39 for altering the on/off status of the lamp 20, and massage program buttons 40a,b for adjusting the pulsating transducers or massage motors located in

the bed lounger back and for setting massage sensation and intensity of the massaging elements. The thin tactile membrane covering the full control panel may help keep massage oils, powder, fluids, or the like from gumming up the buttons or otherwise entering the cushion itself. This can make cleaning easier and provide longer operational life.

Paragraph beginning at page 6, line 1:

An over-the-shoulder lamp 20 may extend from the rear of the back portion 12 of the cushion 10 on a flexible arm 21. Alternatively, the lamp 20 may extend from the front surface or a side surface of the cushion. Lamp 20 and arm 21 may be pivotably connectable at the rear of the cushion 10 to a lamp support housing [23] (not shown) through which an electrical communication may be made and the lamp 20 can be turned off or on. The flexible arm 21 may enable the user to adjust the angel and position of lamp 20. The mass and materials forming the cushion may provide sufficient vibration attenuation and isolation to protect the filaments of a light bulb in the reading lamp.

Paragraph bridging pages 6 and 7, beginning at page 6, line 14:

Referring to FIGS. 5-9, a cushion 110 comprises a padded back portion 112 including padded head rest portion 113 and padded lower back support portion 114 contoured so as to be anatomically comfortable for the user. The back portion may comprise a contoured forward surface and a generally planar rear surface 180, the surfaces separated by a padded interior. Alternatively, the contoured front surface and the planar rear surface maybe separated by an inflatable bladder. The firmness of the bladder may be user adjustable. The bladder may be filled by a pump located inside or outside of the bed cushion. A movable massage cushion 115 may be attached to the cushion 110 in the area of the lower back support portion 114 by means of a hook-and -loop fastener system wherein, e.g. a hook-type strip 223 arranged on tab 116 extending from the movable

massaging cushion 115. Hook type strip engages with loops on the fabric of the back, or with loop strips mounted on the back. Pulsating transducers or massage motors arranged within the massaging cushion 115 may provide a massage. At the option of the user, by disengaging hook-strip 223, massage cushion 115 may be moved to therapeutically deliver massage to other areas of the body, the back or neck, for example, or may be used simply as a pillow. If desired, massage cushion 115 may be unplugged from and detached entirely from the cushion 110. Power to the cushion 110 may be provided by electricity through AC cord and plug connection 130 and 131 respectively or by a rechargeable battery 181 housed within the cushion 110 and chargeable through a connection on the cushion (not shown). Power to the massaging cushion 115 may be provided by extendable power cord 221 and plug 222 which can be connected to an outlet (not shown) located on the cushion 110, for example on the back portion 112 or on an armrest 117 or 118.

Paragraph bridging pages 8 and 9, beginning at page 8, line 20:

As shown in FIG. 6, the back portion 112 of the cushion 110 is capable of being reclined. The back portion 112 can be adjusted to a variety of angles relative to the armrests 117 and 118. The back portion and the armrest can be locked in a desired position with a knob 135. The armrests 117 and 118 may be foldable into an upright position along side the back portion 112. Alternatively, the armrest may be [removeable] removable attached to the back portion with a hook and loop type fasteners. To adjust the angle, the user simply detaches the armrests and then reattaches them to the back portion at a different angle, shown by adjusted back portion 112.

MARKED COPY OF AMENDED CLAIMS

SERIAL NO. 09/801,353

DOCKET NO. BROOKSTONE 00.04

MARKED COPY OF AMENDED CLAIMS

1. (Amended) A cushion for supporting a person in a sitting position, comprising:

a back portion comprising a contoured forward surface and a generally planar rear surface, the surfaces separated by a padded interior[, and];

at least one massage motor carried by the back portion; and

a light source for providing light for a user, the light source mounted to the back portion by an arm.

5. (Amended) The cushion of [claim 4, wherein the armrest comprises] claim 1, further comprising a control panel for altering the on/off status of the light source.

27. (Amended) A massaging bed rest cushion for supporting a person in a sitting position, comprising:

a back portion comprising a contoured forward surface and a rear surface, the surfaces separated by a padded interior,

a plurality of massage motors enclosed between the forward surface and the rear surface, and

a light source mounted to the back portion for providing light for a user.

28. (Amended) The massaging bed rest cushion of claim 27, wherein the massage motors comprise vibratory massage motors.

29. (Amended) The massaging bed rest cushion of claim 27, wherein the massage motors comprise percussive or roller massage motors.

30. (Amended) The massaging bed rest cushion of claim 27, wherein the massage motors comprise pulsating transducers.

31. (Amended) The massaging bed rest cushion of claim 27, wherein the light source is mounted to the back portion by a flexible arm.

32. (Amended) The massaging bed rest cushion of claim 27, further comprising an armrest coupled to the back portion.

33. (Amended) The massaging bed rest cushion of claim 27, wherein the armrest comprises a cup holder.

34. (Amended) The massaging bed rest cushion of claim 27, further comprising a control panel for altering the on/off status of the light source.

35. (Amended) The massaging bed rest cushion of claim 34, wherein the control panel comprises at least one switch for altering the status of the light, the switch being covered by a flexible membrane.

36. (Amended) The massaging bed rest cushion of claim 34, wherein the light source is coupled to the control panel by an electrical connector, the electrical connector enclosed within the interior of the bed cushion.

37. (Amended) The massaging bed rest cushion of claim 27, further comprising a control panel for altering the on/off status of the massage motors.

38. (Amended) The massaging bed rest cushion of claim 27, further comprising an actuator for adjusting the intensity of the light source.

39. (Amended) The massaging bed rest cushion of claim 27, further comprising a removable lamp support for mounting the arm to the back portion.

MARKED COPY OF DRAWINGS

SERIAL NO. 09/801,353

DOCKET NO. BROOKSTONE 00.04

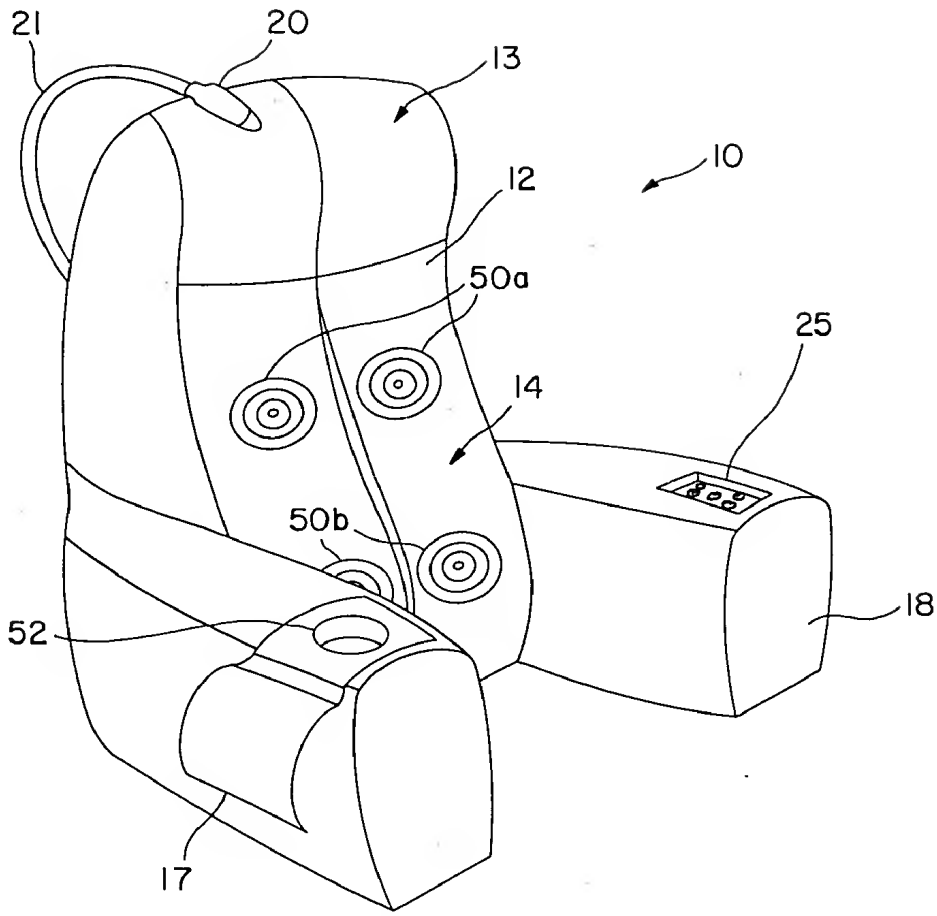

FIG. 1

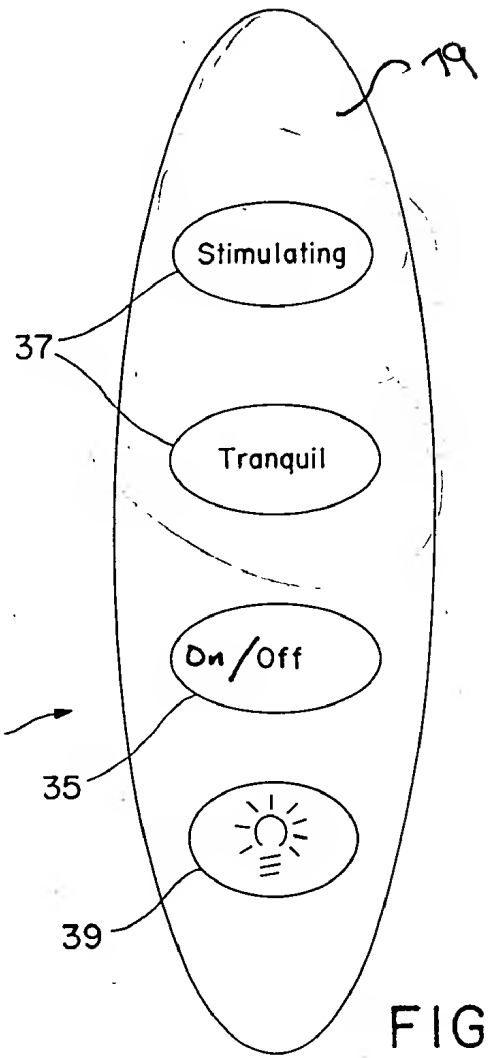

FIG. 4

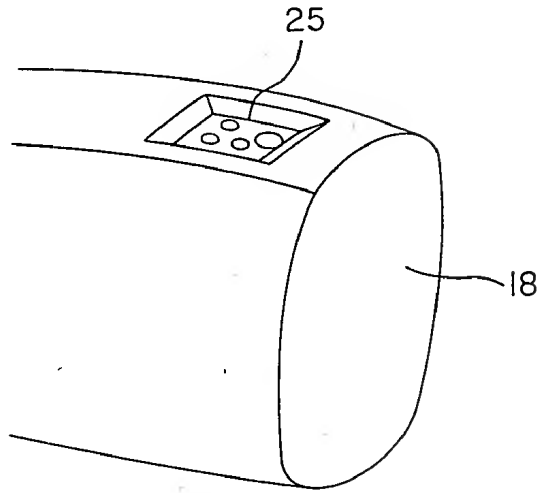

FIG. 2

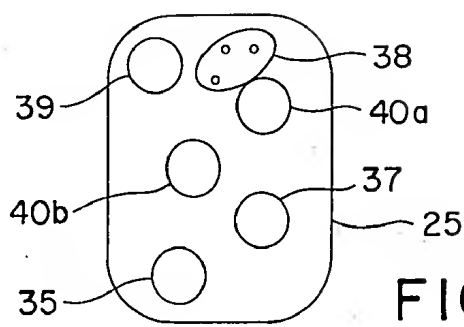

FIG. 3

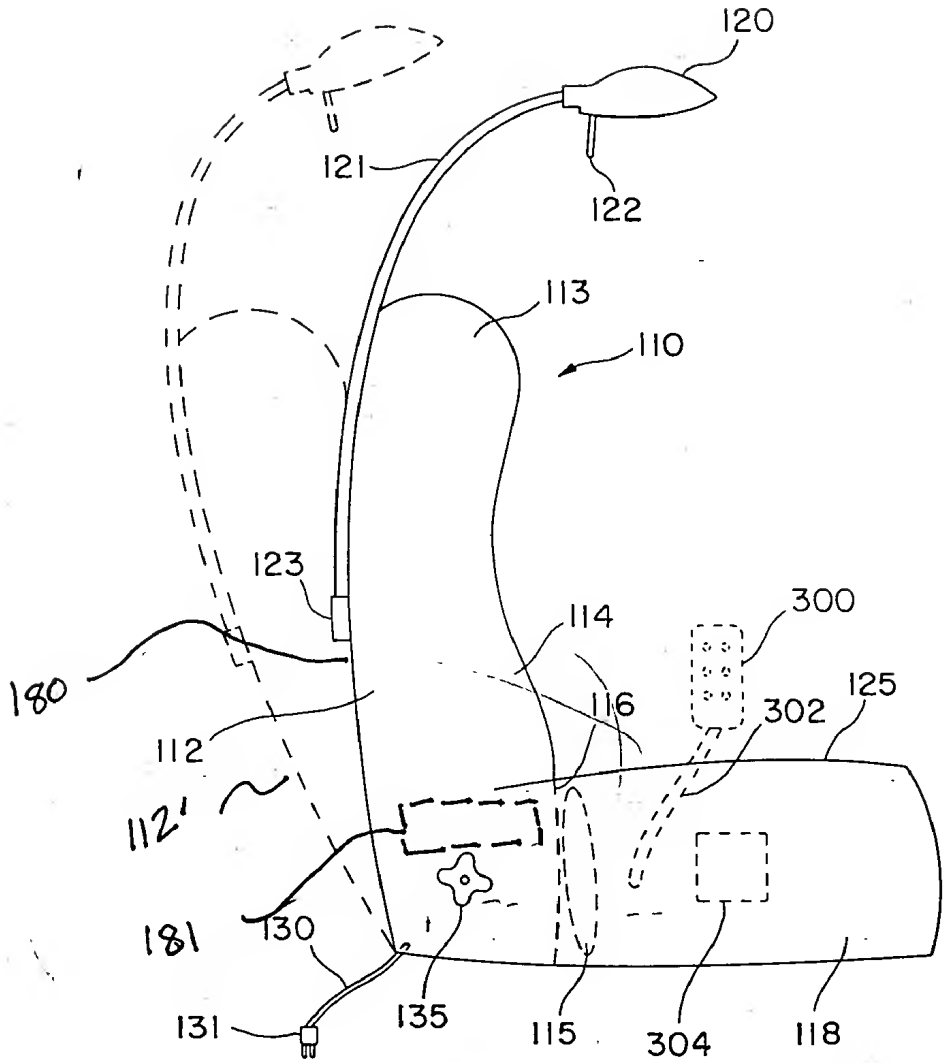

FIG. 6